

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-05-IH-2737
Spectracom, LLC)	NAL Account No. 200732080004
)	FRN No. 0003730710
Applicant for Assignment of Private Land)	
Mobile Stations WNFD452, WNHG245 and		
WNHU507		

FORFEITURE ORDER

Adopted: November 19, 2007

Released: November 20, 2007

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we find that Spectracom, LLC (“Spectracom”), applicant for assignment of Private Land Mobile stations WNFD452, WNHG245, and WNHU507 (the “Stations”), willfully violated Section 1.948 of the Commission’s rules¹ by taking *de facto* control of the Stations and operating those Stations without prior Commission notification and approval. Specifically, Spectracom took control of the Stations in June 2005, but did not apply to obtain Commission approval of the Stations until November 14, 2005.² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ that Spectracom is liable for forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. As discussed in detail in the Spectracom, LLC Notice of Apparent Liability for Forfeiture (“NAL”),⁴ on November 14, 2005, Spectracom filed an FCC Form 603 application for Commission consent to the assignment of the licenses from Valley Comm to Spectracom (the “Application”).⁵ Spectracom reported in Question 7 on the Application that the assignment had already occurred.⁶ In response to a telephone inquiry from Wireless Telecommunications Bureau licensing staff regarding its answer to Question 7, Spectracom responded by letter, and explained that it had purchased the community repeaters from Valley Comm in June, 2005.⁷ Spectracom further acknowledged that it began operating the systems on the date of purchase and

¹ See 47 C.F.R. § 1.948.

² See FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control, File No. 0002379825, at 1 (“Application”).

³ See 47 U.S.C. § 503(b).

⁴ See *Spectracom, LLC*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13412 (Enf. Bur. 2006).

⁵ See note 12, *infra*.

⁶ See Application at 1, Question 7.

⁷ See Letter from Paul McCarty, Spectracom, LLC, to Sharon Weigle, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission (“FCC”), dated November 23, 2005 (“Paul McCarty Letter”).

continued to operate them until the date of the letter on November 23, 2005.⁸ On November 23, 2005, the Commission sent a letter to Spectracom indicating that the assignment in question was apparently consummated prior to Commission approval.⁹ In the same letter, the Commission consented to the assignment of licenses, but did so without prejudice to any subsequent enforcement action.¹⁰ Spectracom did not file a notification of consummation following the consent to assignment as required by Section 1.948(d), and therefore is not the licensee of record for the Stations.¹¹

3. On November 13, 2006, we issued the NAL to Spectracom, proposing a \$12,000 forfeiture for engaging in an unauthorized transfer of control of the Stations, which was largely based on Spectracom's own admission, as described above.¹² In a letter responding to the NAL dated November, 25, 2006, Spectracom now contends that it had not technically purchased the Stations, but, instead, had entered into a lease arrangement with the intent to purchase the Stations when the FCC Application could be completed.¹³ Specifically, Spectracom states that it paid a "rental amount" to Valley Comm to be applied to the purchase price,¹⁴ and under the lease arrangement, Valley Comm would file the Application on Spectracom's behalf once Spectracom's rental payments amounted to the purchase price of the Stations.¹⁵ According to Spectracom, formal purchase of the Stations has not yet been completed and, therefore, no unauthorized assignment took place because Valley Comm continues to own the repeaters and the licenses at issue.¹⁶ A search of the Commission's records indicates, however, that Spectracom neither filed FCC Form 608 (Application or Notification for Spectrum Leasing Arrangement or Private Commons Arrangement) for approval of the alleged lease arrangement¹⁷ nor did it file FCC Form 603 (FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control) prior to November 14, 2005.

III. DISCUSSION

4. Section 1.948 of the Commission's rules requires that "[a]uthorizations in the Wireless Radio Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or the control of a license holding such authorizations may be transferred, only upon application to and approval by the Commission."¹⁸ Thus, under Section 1.948 of the Commission's rules, a licensee in the Wireless Radio Services involved in an assignment of authorization or substantial transfer of control must apply to and receive authorization from the Commission before control of a station is transferred or an assignment is consummated.¹⁹

⁸ See *id.*

⁹ See Letter from Tracy Simmons, Associate Chief, Licensing Operations, Public Safety and Critical Infrastructure Division, Federal Communications Commission, to Spectracom, LLC, Attn. Paul Michael McCarty, dated November 23, 2005.

¹⁰ See *id.*

¹¹ See 47 C.F.R. § 1.948(d).

¹² See *Spectracom, LLC*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13412 (Enf. Bur. 2006).

¹³ See Letter from Mike McCarty, Spectracom, to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, dated November 25, 2006, at 1 ("NAL Response").

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See 47 C.F.R. §§ 1.9030(e) and 1.9035(e).

¹⁸ 47 C.F.R. § 1.948(a).

¹⁹ See *id.*

5. In 2003, the Commission adopted a set of rules that allow for spectrum leasing in certain circumstances.²⁰ To be eligible to lease spectrum, the licensee must have exclusive use of the spectrum.²¹ These rules only permit transfer of *de facto* control under the spectrum leasing provisions after Commission approval.²²

6. In the instant case, the record shows that Spectracom took control of the Stations from Valley Comm in June 2005, and immediately began operating the systems without prior FCC approval.²³ In the NAL, we noted that Spectracom filed its FCC Form 603 requesting approval of the license assignments five months late. Spectracom argues in its NAL Response that, during those five months, it was only leasing the Stations.²⁴ This defense is unavailing as it does not avoid the requirement of prior Commission approval of spectrum leases, as noted above. Further, because the licenses at issue here are for shared use of frequencies below 470 MHz that are not eligible for spectrum leasing,²⁵ Spectracom could not have obtained Commission approval for the transfers of control associated with the alleged spectrum leases even if it had attempted to file for the requisite approvals.²⁶ Spectracom's NAL Response offers no other defenses or arguments. We therefore find that Spectracom willfully violated Section 1.948 of the Commission's rules by failing to notify and receive approval from the Commission before assuming control of the licenses at issue.

7. With respect to the forfeiture amount, Spectracom asserts in response to the NAL that it is unable to pay a forfeiture in the amount of \$12,000. As noted in the NAL, the Commission does not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless such claim is supported by: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.²⁷ Despite this explicit direction, Spectracom has provided no documentation to support its claim of inability to pay and therefore this defense must be rejected.

8. Spectracom's NAL Response does not otherwise dispute the forfeiture calculations described in detail in the NAL.²⁸ We therefore affirm the forfeiture calculation and methodology set forth in the NAL. Applying the factors set forth in Section 1.80 and Section 503(b)(2)(D) of the Act to the instant case, we conclude that Spectracom is liable for a \$12,000 forfeiture.

²⁰ The leasing rules govern the transfer of *de facto* control pursuant to a spectrum leasing arrangement. Specifically, the Commission relaxed its policies to provide a process for lessors to obtain approval to transfer control of station facilities to lessees. The Commission adopted new rules including Section 1.9030(e) (relating to long term leases) and Section 1.9035(e) (relating to short term leases), which require the filing of an FCC Form 608 prior to a transfer of *de facto* control of a wireless radio system pursuant to a lease agreement. See *Promoting Efficient Use of the Spectrum Through Elimination of Barriers to Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003); see also *Promoting Efficient Use of the Spectrum Through Elimination of Barriers to Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503 (2004).

²¹ See 47 C.F.R. §§ 1.9001(b).

²² See 47 C.F.R. §§ 1.9030(e) and 1.9035(e).

²³ See Paul McCarty Letter at 1.

²⁴ See NAL Response at 1.

²⁵ See 47 C.F.R. §§ 90.173 and 1.9001(b).

²⁶ See 47 C.F.R. §§ 90.173, 1.9001(b), 1.9030(e) and 1.9035(e).

²⁷ See NAL, 21 FCC Rcd at 13414-15, ¶ 11. See also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17106-07 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁸ See NAL, 21 FCC Rcd at 13413-14, ¶¶ 5-6.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's Rules, Spectracom, LLC **SHALL FORFEIT** to the United States government the sum of \$12,000 for willfully violating Section 1.948 of the Rules.²⁹

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules³⁰ within 30 days of the release of this *Forfeiture Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL Acct. No. and FRN No. referenced in the caption. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Pittsburgh, and account number FCC/ACV 9116229.

11. Requests for payment of the full amount of this Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.³²

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Spectracom, LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau

²⁹ See 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.948.

³⁰ See 47 C.F.R. § 1.80.

³¹ 47 U.S.C. § 504(a).

³² See 47 C.F.R. § 1.1914.